
HOUSE BILL 2499

State of Washington

60th Legislature

2008 Regular Session

By Representatives Pedersen and Rodne

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1 AN ACT Relating to notice under the Washington business corporation
2 act; and amending RCW 23B.01.410.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 23B.01.410 and 2002 c 297 s 10 are each amended to
5 read as follows:

6 (1) Notice under this title must be provided in the form of a
7 record, except that oral notice of any meeting of the board of
8 directors may be given if expressly authorized by the articles of
9 incorporation or bylaws.

10 (2) Permissible means of transmission.

11 (a) Oral notice. Oral notice may be communicated in person, by
12 telephone, wire, or wireless equipment which does not transmit a
13 facsimile of the notice, or by any electronic means which does not
14 create a record. If these forms of oral notice are impracticable, oral
15 notice may be communicated by radio, television, or other form of
16 public broadcast communication.

17 (b) Notice provided in a tangible medium. Notice may be provided
18 in a tangible medium and be transmitted by mail, private carrier, or
19 personal delivery; telegraph or teletype; or telephone, wire, or

1 wireless equipment which transmits a facsimile of the notice. If these
2 forms of notice in a tangible medium are impracticable, notice in a
3 tangible medium may be transmitted by an advertisement in a newspaper
4 of general circulation in the area where published.

5 (c) Notice provided in an electronic transmission.

6 (i) Notice may be provided in an electronic transmission and be
7 electronically transmitted.

8 (ii) Notice to shareholders or directors in an electronic
9 transmission is effective only with respect to shareholders and
10 directors that have consented, in the form of a record, to receive
11 electronically transmitted notices under this title and designated in
12 the consent the address, location, or system to which these notices may
13 be electronically transmitted and with respect to a notice that
14 otherwise complies with any other requirements of this title and
15 applicable federal law.

16 (A) Notice to shareholders or directors for this purpose includes
17 material that this title requires (~~(or permits)~~) to accompany the
18 notice.

19 (B) A shareholder or director who has consented to receipt of
20 electronically transmitted notices may revoke this consent by
21 delivering a revocation to the corporation in the form of a record.

22 (C) The consent of any shareholder or director is revoked if (I)
23 the corporation is unable to electronically transmit two consecutive
24 notices given by the corporation in accordance with the consent, and
25 (II) this inability becomes known to the secretary of the corporation,
26 the transfer agent, or any other person responsible for giving the
27 notice. The inadvertent failure by the corporation to treat this
28 inability as a revocation does not invalidate any meeting or other
29 action.

30 (iii) Notice to shareholders or directors who have consented to
31 receipt of electronically transmitted notices may be provided by (A)
32 posting the notice on an electronic network and (B) delivering to the
33 shareholder or director a separate record of the posting, together with
34 comprehensible instructions regarding how to obtain access to the
35 posting on the electronic network.

36 (iv) Notice to a domestic or foreign corporation, authorized to
37 transact business in this state, in an electronic transmission is

1 effective only with respect to a corporation that has designated in a
2 record an address, location, or system to which the notices may be
3 electronically transmitted.

4 (d) Materials accompanying notice to shareholders of public
5 companies. Notwithstanding anything to the contrary in this section or
6 any other section of this title, if this title requires that a notice
7 to shareholders be accompanied by certain material, a public company
8 may satisfy such a requirement, whether or not a shareholder has
9 consented to receive electronically transmitted notice, by (i) posting
10 the material on an electronic network (either separate from, or in
11 combination or as part of, any other materials the public company has
12 posted on the electronic network in compliance with applicable federal
13 law) at or prior to the time that the notice is delivered to the public
14 company's shareholders entitled to receive the notice, and (ii)
15 delivering to the public company's shareholders entitled to receive the
16 notice a separate record of the posting (which record may accompany, or
17 be contained in, the notice), together with comprehensible instructions
18 regarding how to obtain access to the posting on the electronic
19 network. In such a case, the material is deemed to have been delivered
20 to the public company's shareholders at the time the notice to the
21 shareholders is effective under this section. A public company that
22 elects pursuant to this section to post on an electronic network any
23 material required by this title to accompany a notice to shareholders
24 is required, at its expense, to provide a copy of the material in a
25 tangible medium (alone or in combination or as part of any other
26 materials the public company has posted on the electronic network in
27 compliance with federal law) to any shareholder entitled to such a
28 notice who so requests.

29 (3) Effective time and date of notice.

30 (a) Oral notice. Oral notice is effective when received.

31 (b) Notice provided in a tangible medium.

32 (i) Notice in a tangible medium, if in a comprehensible form, is
33 effective at the earliest of the following:

34 (A) If expressly authorized by the articles of incorporation or
35 bylaws, and if notice is sent to the person's address, telephone
36 number, or other number appearing on the records of the corporation,
37 when dispatched by telegraph, teletype, or facsimile equipment;

38 (B) When received;

1 (C) Except as provided in (b)(ii) of this subsection, five days
2 after its deposit in the United States mail, as evidenced by the
3 postmark, if mailed with first-class postage, prepaid and correctly
4 addressed; or

5 (D) On the date shown on the return receipt, if sent by registered
6 or certified mail, return receipt requested, and the receipt is signed
7 by or on behalf of the addressee.

8 (ii) Notice in a tangible medium by a domestic or foreign
9 corporation to its shareholder, if in a comprehensible form and
10 correctly addressed to the shareholder's address shown in the
11 corporation's current record of shareholders, is effective:

12 (A) When mailed, if mailed with first-class postage prepaid; and

13 (B) When dispatched, if prepaid, by air courier.

14 (iii) Notice in a tangible medium to a domestic or foreign
15 corporation, authorized to transact business in this state, may be
16 addressed to the corporation's registered agent at its registered
17 office or to the corporation or its secretary at its principal office
18 shown in its most recent annual report, or in the case of a foreign
19 corporation that has not yet delivered its annual report in its
20 application for a certificate of authority.

21 (c) Notice provided in an electronic transmission. Notice provided
22 in an electronic transmission, if in comprehensible form, is effective
23 when it: (i) Is electronically transmitted to an address, location, or
24 system designated by the recipient for that purpose; or (ii) has been
25 posted on an electronic network and a separate record of the posting
26 has been delivered to the recipient together with comprehensible
27 instructions regarding how to obtain access to the posting on the
28 electronic network.

29 (4) If this title prescribes notice requirements for particular
30 circumstances, those requirements govern. If articles of incorporation
31 or bylaws prescribe notice requirements, not inconsistent with this
32 section or other provisions of this title, those requirements govern.

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